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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/585,902

03/29/2007

Karen Rita Crawford

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EXAMINER

DESAI, HEMANT

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/585,902	<b>Applicant(s)</b> CRAWFORD ET AL.	
	<b>Examiner</b> Hemant M. Desai	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on amendment filed on 3/30/2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 20-34, 39, 40 and 44-48 is/are pending in the application.
- 4a) Of the above claim(s) 20-34 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40 and 44-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 40 and 44-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 40, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 40 and 44-45 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent (FR 2747107, hereinafter '107) in view of Pajak et al. (6058682).

French Patent discloses a method for providing a packaging filled with powder, comprising the provision of a container provided with a base (4, fig. 1) and a top which has a peripheral edge (fig. 1), the inside wall of the container consisting of a heat sealable material (because the filling the container with powder (15, fig. 4), placing a

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heat-sealable film (16, fig. 6) above the content of the container, and joining the film, provision being made for the fitting of a lid (1, fig. 6), the packaging further comprising a scoop (3), accommodated by the top part of the container (see fig. 6) on the film (7), the lid provided with the fixing means (9, figs. 3-4) for the scoop and adhering the lid rim to the peripheral top edge of the container for defining an accommodation space between the lid and the film for the scoop (see fig. 6), which meets all the claimed limitations.

French Patent as mentioned above, disclose all the claimed limitations, including a heat sealable film (7, 16) inside the container. French Patent is silent about sealing the heat sealable film inside the wall of the container, instead French Patent discloses to deform (16) the heat sealable film (7, fig. 6) to make the room for the spoon (3). However, Pajak et al. disclose that it is known in the art to place a heat sealable film inside the container and seal the film with the inside wall of the container (see fig. 5) to make the room between the lid and the heat sealable film to insert the spoon (see fig. 7). Because both Reference French Patent and Pajak et al. teach methods for placing the heat sealable film such a way to make room between the film and the lid, it would have been obvious to one skilled in the art to substitute one method for the other to achieve the predictable result of making a room between the film and lid so that the spoon can inserted in the space between the lid and the film. ***KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007).***

Regarding the claimed distance 20-25 mm below the peripheral and the distance claimed in claim 48, it is obvious to one having an ordinary skill in the art to adjust the distance of the film below the peripheral edge depending on the size of the spoon.

Regarding claim 44, French Patent discloses that the provision of a container comprises using blanks of wall material and base material as the starting materials and joining these together immediately before filling with product.

Regarding claim 45, French Patent discloses that the heat-sealable film provides a gastight seal.

5. Claim 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent and Pajak et al. as applied to claim 40 above, and further in view of Gible (3556174).

The modified French Patent, as mentioned above, meets all the claimed limitations, except for feeding inert gas in the headspace before sealing the film to the container. However, Gible discloses that it is known in the art to feed inert gas in headspace before sealing the container to extend shelf life of the product (see col. 1, lines 20-40). Thus, it would have been obvious to one of ordinary skill in the art to feed the inert gas before sealing the container in the method of Pajak et al. to extend shelf life of the product as taught by Gible. Using the known technique of replacing headspace with the inert gas for extending shelf life of the product of Pajak et al. would have been obvious to one of ordinary skill. ***KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007).***

#### ***Response to Arguments***

6. Applicant's arguments with respect to claims 40, 44-48 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hemant M Desai/  
Primary Examiner, Art Unit 3721